

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOEL MARTINEZ,

Plaintiff,

vs.

COLONEL JOSEPH R. FUENTES,
et al,

Defendants.

CIVIL ACTION NO.
15-2932 (BRM-TJB)

CONFIDENTIAL
ORAL DEPOSITION OF:

THOMAS R. MURTHA

* * * * *
Tuesday, April 10, 2018
* * * * *

Transcript in the above matter taken at
the offices of Richard J. Hughes Justice Complex,
Office of the Attorney General, 25 Market Street,
Trenton, New Jersey, commencing at 11:00 a.m.

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Thomas R. Murtha

April 10, 2018

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<p>1 WITNESS INDEX</p> <p>2 EXAMINATION OF SERGEANT MURTHA BY MR. LOUGHRY:</p> <p>3 PAGE 5</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (THOMAS R. MURTHA having been duly</p> <p>2 sworn, was examined and testified as follows:)</p> <p>3 (EXAMINATION OF SERGEANT MURTHA BY MR. LOUGHRY:)</p> <p>4 Q. Thomas Murtha?</p> <p>5 A. Yes.</p> <p>6 Q. Are you still an official with the State</p> <p>7 Police?</p> <p>8 A. Yes, I am.</p> <p>9 Q. What is your title or your rank?</p> <p>10 A. I'm a staff sergeant.</p> <p>11 Q. And where are you presently assigned?</p> <p>12 A. Currently assigned to the Tuckerton</p> <p>13 Station in West Creek, New Jersey, part of Troop C.</p> <p>14 Q. How long have you been there?</p> <p>15 A. I think this April will be coming up on</p> <p>16 four years.</p> <p>17 Q. The event that brings us here, an event</p> <p>18 or events really coalesce around April 26, 2013.</p> <p>19 Where were you assigned then?</p> <p>20 A. April of 2013 I was assigned to the</p> <p>21 Hamilton substation.</p> <p>22 Q. Is that the one on Negron?</p> <p>23 A. Yes.</p> <p>24 Q. And were you a sergeant at that time?</p> <p>25 A. Yes, I was.</p>

Pages 2 to 5

Page 6

1 Q. Same rank you have now?

2 A. **Same rank, staff sergeant.**

3 Q. Did you have supervisory

4 responsibilities at that point?

5 A. **Yes.**

6 Q. What were those, a summary?

7 A. **I was a squad leader for, I forget which**

8 **particular squad, if it was one, two, three or four.**

9 **But I was a squad leader. I was ultimately**

10 **responsible for the administration of the squad and**

11 **supervision, the same.**

12 Q. And do you know Trooper Jose Rivera?

13 A. **Yes.**

14 Q. And did you know him back in those days?

15 A. **Yes.**

16 Q. Was he on that squad that you were in

17 charge of?

18 A. **Yes, he was.**

19 Q. Was there anybody else in

20 administration or supervision between you and him? I

21 am looking for a chain of command here. Was the

22 chain of command of him up to you or somewhere in

23 between?

24 A. **At the squad level, I was the squad**

25 **leader. I did have control supervisors assigned to**

Page 8

1 MR. VOMACKA: Thank you.

2 BY MR. LOUGHRY:

3 Q. Have you had a chance to look at this

4 document?

5 A. **I am looking at it now, yes.**

6 Q. My first question is going to be did you

7 perform this Performance Evaluation, is this your

8 work?

9 A. **Yes, it is.**

10 Q. Is there anybody else that contributed

11 to it or is it solely you?

12 A. **I am the author of the Performance**

13 **Evaluation.**

14 Q. Okay. And that was a typical function

15 for you?

16 A. **Yes.**

17 Q. So let me direct your attention to Page

18 11 of 14.

19 A. **Okay.**

20 Q. At the bottom of that page, you know,

21 there's another identifying number, NJSP MARTINEZ

22 221, but right below that it says Page 11 of 14. Did

23 you find it?

24 A. **Yes.**

25 Q. Okay. There's a period here at the top

Page 7

1 **me at that time.**

2 Q. Okay.

3 A. **Which were, in my absence, responsible**

4 **for filling my duties, but day-to-day their main**

5 **focus was the actual on-the-road supervision.**

6 Q. Who were your patrol supervisors, who

7 were they?

8 A. **I don't recall at this time.**

9 Q. Okay. Did you have responsibility for

10 doing performance evaluations for the squad members?

11 A. **Yes.**

12 Q. And did you do performance evaluations

13 for Trooper Rivera?

14 A. **Yes, I did.**

15 Q. I think I want to show you now, I'm

16 going to show you what we previously marked as Rivera

17 3 for identification. And I probably -- I gave my

18 extra copy to your colleague, Mr. Marshall-Otto.

19 That's the one that is marked.

20 MR. VOMACKA: I'll be happy to share.

21 MR. LOUGHRY: I am saying I normally

22 hand you my extra copy, but I've handed my

23 extra copy at the previous deposition.

24 MR. MARSHALL-OTTO: Here you go

25 (Handing).

Page 9

1 right-hand corner, 4/20/2013 to 7/12/2013. That is

2 roughly a quarter of the year?

3 A. **That's three months of the year. If you**

4 **were to say, yeah, twelve divided by four, this is a**

5 **partial periodic evaluation that was done for Trooper**

6 **Rivera from the period of 4/20/13 when he came under**

7 **my supervision until he was transferred to Kingwood**

8 **on July 12, 2013.**

9 Q. All right. What I was getting at and

10 let me ask you this directly, were these typically

11 done every quarter?

12 A. **Performance evaluations, the evaluation**

13 **system has changed through the years. Ones were**

14 **given for different reasons. We would have from the**

15 **time you first graduate the Academy, you had**

16 **probationary trooper evaluations which are done on a**

17 **90/180, every 90 days for three separate times. You**

18 **have the yearly evaluation, and you would have**

19 **quarterly appraisals which were done quarterly. The**

20 **purpose of this one here, from what I recall was for**

21 **Trooper Rivera was transferred from the Hamilton**

22 **station to Kingwood.**

23 Q. Do you know why he was transferred?

24 A. **No.**

25 Q. Did you play any role in the decision to

Pages 6 to 9

Page 10

1 have him transferred?

2 A. No.

3 Q. Did someone come to you and say in

4 essence, in words and substance, you need to do an

5 eval because he's being transferred?

6 A. Our evaluation system is prescribed by

7 our standard operating procedures, and they are

8 prescribed to be done at certain intervals and

9 certain events trigger that, such as a transfer, a

10 yearly -- again, the system has now changed and has

11 been revamped. Probationary evals were done, say, if

12 someone was promoted, they get one within one year of

13 their promotion, their probationary time. This one

14 was done specifically upon Trooper Rivera's transfer.

15 Q. Okay. There's a commentary paragraph

16 here. Did you write that verbiage?

17 A. On what page?

18 Q. Page 11 of 14, the one I've been talking

19 about.

20 A. Yes, I did.

21 Q. I have some questions about some initial

22 acronyms, whatever, here.

23 A. Uh-hum.

24 Q. First it says during this rating period,

25 Trooper Rivera was Verbally Counseled. Those two

Page 12

1 is that what you're saying?

2 A. You say something happened?

3 Q. Well. . .

4 A. Day-to-day basis, you're working, you

5 may note something. Hey, you know, I'd like you to

6 do it this way. Hey, that situation there, you could

7 have done it this way. There's different levels to

8 it. It's a -- it doesn't necessarily connote

9 negativity. But I could see where would one infer

10 from there.

11 Q. Do you know what SOP C-22 is? It's

12 mentioned there?

13 A. I would have to be, my recollection

14 would have to be refreshed by the actual SOP. Off

15 the top of my head. . . Usually, I don't recall what

16 SOP C-22 is termed off the top of my head.

17 Q. Let's take a look at the rest of the

18 paragraph. Maybe we can draw some inferences.

19 There's mention in the next sentence of an incident

20 in which Trooper Rivera and I am quoting here, quote,

21 failed to document his location in the CAD. Do you

22 see that reference?

23 A. Yes.

24 Q. Is that some kind of issue that you

25 might note as a supervisor?

Page 11

1 words "Verbally Counseled", the first letter was

2 capitalized, is this a term of art, Verbally

3 Counseled?

4 A. Within our internal evaluation systems,

5 we have a system called the, MAPPS, it's an acronym.

6 When you have to address something, there are ways

7 you can do that. You can verbally counsel somebody,

8 you can review an SOP with them, you can refer a

9 matter to our Internal Affairs System, you can

10 commend somebody for their actions. Verbal

11 counseling is, as you said, a term of art for a form

12 of intervention.

13 Q. Is it a reprimand?

14 A. These turn classified under

15 interventions. Verbally counseling, you know, my

16 understanding is, you noted something and you

17 addressed it.

18 Q. When you say noted something, you mean

19 something negative?

20 A. If you're counseling somebody, I could

21 see how realistically it would be a negative

22 connotation. It's just a corrective measure a

23 supervisor would take.

24 Q. In other words, something happened that

25 you want to intervene about to correct in the future;

Page 13

1 A. Yes.

2 Q. And what's the concern there?

3 A. Well, the SOP, again, off the top of my

4 head, I can't recollect what it is. Whether, I think

5 C7 is our evaluations, F19 may be patrol procedures.

6 I mean, there's all different acronyms. C7 -- C-22

7 may be something to do with radio procedures. Again,

8 during this time, I verbally counseled in regards to

9 whatever. He again, without the SOP or without the

10 verbal counseling, I wouldn't be able to speak to the

11 exact verbiage.

12 MR. LOUGHRY: I ask the reporter to note

13 in the document request, we had one before, in

14 the previous deposition, I'd like to have a

15 copy of that SOP C-22. Obviously, there's a

16 protective order, and I'll confirm in that a

17 letter to you or. . .

18 MR. MARSHALL-OTTO: You can include it

19 in a letter to me. That's fine.

20 MR. LOUGHRY: I don't believe it's

21 privileged. All right.

22 By MR. LOUGHRY:

23 Q. So it doesn't appear in this photograph

24 as if you are commenting in a particular arrest for

25 this individual conduct, and harassment for any

Pages 10 to 13

Page 14

1 allegations made against Trooper Rivera, that's not
 2 the subject of what you are writing about?
 3 A. No.
 4 Q. What you are writing about, Trooper
 5 Rivera made an error in the basic control function.
 6 What was the error?
 7 A. Excuse me?
 8 Q. What was his error?
 9 A. Again, I believe this pertains to radio
 10 procedures, and again pertains to the other incident,
 11 I believe at the time of the incident, his location
 12 did not marry up with the CAD location, and I
 13 believe, it was more like a safety thing, where, we
 14 need to know where you're at.
 15 Q. This was marked as Rivera 1 at his
 16 deposition. It was identified by him as a CAD
 17 Report. And you just used the phrase, I think, CAD.
 18 Is this what you are referring to? You would refer
 19 to as the CAD Report?
 20 A. Yes, it is.
 21 Q. And what is, just for the record, what
 22 is the function of that CAD Abstract or CAD report?
 23 A. The CAD is a computer system, it's the
 24 computer aided dispatch system. It's a system
 25 wherein, you know, anybody and everybody in the State

Page 16

1 A. During the day, when you come in in the
 2 morning, you log onto the system, it puts a general
 3 entry you're on duty. If you were to say SOP, it
 4 says, which I believe, C-22 may be something with
 5 radio procedures, you're supposed to keep the patrol
 6 chart updated or keep the computer updated. A, just
 7 for general supervision tracking purposes, for
 8 safety, numerous different reasons. At the time of
 9 this incident previous to that, he was signed out on
 10 a patrol loop of 295. Our SOP dictates, my
 11 understanding, that you update the CAD at least once
 12 an hour, and then, you know, there is always
 13 different verbiage in there, stuff that, things that
 14 occur. You just, you document them, or things that
 15 you are doing. And again, for various different
 16 reasons, whether it's statistically to track stuff,
 17 whether it's just basic safety, whether it's for just
 18 general knowledge as a supervisor. You like to know
 19 where your people are.
 20 Q. And did you make a determination at some
 21 point that there was some period of time where you,
 22 the supervisor, you know, the station, did not know
 23 where he was?
 24 A. Yes.
 25 Q. Did you learn subsequently where he had

Page 15

1 Police that they logged into the system, you can
 2 track where they are. And when things, incidents
 3 occur, or motor vehicle stops, they generate what's
 4 called a CAD incident number. So this is a record of
 5 what occurred at this time at this date.
 6 Q. Now, did you have access to this, this
 7 CAD report, in the process of you filling the
 8 evaluation and writing the paragraph that's on page
 9 -- the commentary that's on Page 11 of 14?
 10 A. I had access to all the State Police
 11 systems that I would need to prepare this.
 12 Q. Did you look at the CAD Report in order
 13 to write that?
 14 A. In conjunction as I wrote this, did I
 15 specifically take this out? No. Do I have access to
 16 it? Sure, I have access to anything.
 17 Q. How did you know that he had failed to
 18 report a location?
 19 A. I was the supervisor on the date.
 20 Q. You remember the events on the date?
 21 A. On that date when this occurred, he was
 22 in the computer aided dispatch system for a control
 23 loop.
 24 Q. What does that mean, to be in the system
 25 for a control loop? What does that mean?

Page 17

1 been?
 2 A. Yes.
 3 Q. Where was that?
 4 A. At the time this occurred, he was in
 5 Lawrence Township at the Lawrenceville School.
 6 Q. And was that part of his patrol route?
 7 A. Trooper Rivera is a New Jersey State
 8 Trooper assigned to the Hamilton Station. We have a
 9 prescribed patrol area. 295 is in that area which
 10 covers Lawrence, Lawrenceville School, the Lawrence
 11 off the highway. That is in our area, yes.
 12 Q. When you say patrol loop, is that part
 13 of the patrol loop?
 14 A. Again, you get into a semantic of the
 15 roadway versus what is off. It's in the vicinity of
 16 where he was. I don't know specifically where he was
 17 but he was in the vicinity.
 18 Q. The dispatch call there, the first
 19 contact with dispatch at what, 16:05?
 20 A. According to this, yes.
 21 Q. And that's the first time on that report
 22 which treats this incident of arrest, right?
 23 A. On this report, yes.
 24 Q. And let's see. Here's Rivera 2, another
 25 document I want to ask you about. Do you recognize

Pages 14 to 17

Page 18

1 this document or this type of document at least?

2 **A. Sure, patrol truck.**

3 Q. Who maintains that -- does that patrol

4 chart? Does the trooper do it, or someone at

5 headquarters do it?

6 **A. The patrol chart is maintained by the**

7 **trooper. He's responsible for making entries and**

8 **updating it. How it's actually entered into the**

9 **computer dispatch, it's, a trooper radios out,**

10 **dispatcher receives it, they can put the entry in.**

11 **With the new computer aided dispatch in the car, you**

12 **can actually update your location yourself. You can**

13 **--**

14 Q. I'm sorry. You mean you have a key

15 board or something in your computer and you can input

16 the information?

17 **A. You can import it yourself.**

18 Q. How about in 2013, was that the case?

19 **A. Yes.**

20 Q. This one, can you tell in looking at

21 this one, whether he was importing this stuff on his

22 computer or calling it in?

23 **A. This was inputted via the dispatcher.**

24 Q. We're talking about the next document.

25 **A. The computer-aided dispatch?**

Page 20

1 patrol loop 295.

2 Q. He was on patrol at 295.

3 MR. VOMACKA: You're asking in the

4 document?

5 MR. LOUGHRY: Yes, in the document. I

6 don't think this is official with him in the

7 car. Doesn't know. I am looking at the

8 document.

9 THE WITNESS: That's what was generated,

10 yes. Now, if he were to pull that, that CAD,

11 you could see if he inputted it or they

12 inputted. For me reviewing as a supervisor,

13 somehow, some way, he was on the loop of 295.

14 BY MR. LOUGHRY:

15 Q. Well, can you put these two reports

16 together, and I want to make sure I get the exhibit

17 numbers right. Rivera 1 and Rivera 2, and looking at

18 the information on those reports, is that

19 information, the sum total of it, what leads you to

20 the commentary paragraph and the conclusion that the

21 trooper made an error in basic patrol function?

22 **A. If you are doing a patrol loop, there's**

23 **no patrol loop, it's -- take a look down the road,**

24 **take a look back, make sure no one is broken down, no**

25 **accidents. If you are in the vicinity of that and**

Page 19

1 Q. Yes.

2 **A. Transcribes that into a different**

3 **program with generates a patrol log. They are two**

4 **systems intertwined.**

5 Q. Right.

6 **A. If you were to add up all the CAD**

7 **incidents from the day, it translates into your**

8 **patrol chart.**

9 Q. Fair enough.

10 **A. It aggregates everything into this.**

11 Q. It looks like there's a time period, I

12 have to get my copy out because I can't look across

13 the table, somewhere between 15:24 and 16:05?

14 **A. Yes.**

15 Q. There's sort of a gap of time of about

16 39 minutes, something like that?

17 **A. Uh-hum.**

18 Q. The last entry, prior to the 16:05

19 entry, is, he's out on 295?

20 **A. 15:24 he enters the patrol loop or**

21 **somebody, whether him or dispatch, he signed out on**

22 **the patrol loop of 295.**

23 Q. He signed into or out of?

24 **A. Again, it is a matter of semantics. At**

25 **15:24 that was entered into the CAD that he was on**

Page 21

1 **you stop off at the Dunkin Donuts to get a cup of**

2 **coffee, you wouldn't necessarily say, hey, I am at**

3 **Dunkin Donuts. But if he was out at the Lawrence**

4 **School for a patrol-related function, community**

5 **policing, such as target hardening, doing a critical**

6 **infrastructure check, I would assume he would have**

7 **updated his location, which he did not.**

8 Q. How about if he's out there to visit the

9 baseball field where he's a volunteer baseball coach

10 and hang out with the kids for a while in the middle

11 of his shift? How about that?

12 **A. Again, in this day and age of soft**

13 **targets, community policing, when you say hang out,**

14 **if you are doing it in a semi-official capacity, I**

15 **would assume that he would sign out there.**

16 Q. There should be an entry?

17 **A. As a supervisor, I would have liked to**

18 **have known where he was.**

19 Q. If he was just taking a break, it has

20 nothing to do with his police work, you wouldn't

21 necessarily want to know where he was? I am asking.

22 **A. You're trying to take an art and make it**

23 **into a science.**

24 Q. Okay.

25 **A. The freedom that the trooper has and the**

Pages 18 to 21

Page 22

1 discretion that the trooper has of where he goes and
 2 when he goes absent direction, as long as he's on
 3 patrol and doing somewhat of a patrol-related
 4 function, I don't care if they run radar at the
 5 Scudder Falls Bridge, or if they look for expired
 6 inspections on 29 and 129, they have the freedom to
 7 go, as long as they are within that area. Again,
 8 just for documentation purposes, for credit purposes,
 9 productivity and statistical purposes, if somebody is
 10 doing a property check, somebody is out in a
 11 community policing detail, or if somebody is out on a
 12 meal, you want to know. However, you do make
 13 allowances. If somebody stops for a necessity, call
 14 of nature, someone wants to grab a bottle of water.
 15 But specifically related to this, A, I would like to
 16 have known he was there, and for, B, the safety
 17 aspect, and for him to get the credit, if he's doing
 18 something positive for the community in somewhat of
 19 an official capacity as the State Police.
 20 Q. Did you ever discuss this event with
 21 Trooper Rivera after the event occurred, that is,
 22 after the arrest occurred?
 23 A. Yes.
 24 Q. And when did you discuss it?
 25 A. In conjunction with him coming back to

Page 23

1 the station. You know, when he was -- my
 2 recollection, when he said he had one under arrest, I
 3 looked at the computer, and he's on the patrol loop.
 4 Usually there's some precipitating event, such as a
 5 motor vehicle stop, a pedestrian contact, which, hey,
 6 if he's out on a motor vehicle stop and he says I
 7 have one under arrest, generally, A, maybe it's a CDS
 8 arrest or maybe it's a DWI, maybe it's some other
 9 sort of arrest. When someone says patrol loop and
 10 then they say they want an arrest, I want to know
 11 what's going on.
 12 Q. Sure.
 13 A. We got back to the station. We spoke as
 14 to what occurred.
 15 Q. What did he tell you?
 16 A. He said he was out in Lawrence School,
 17 your client had encountered him, there was some
 18 tumultuous behavior by your client, and your client
 19 grabbed him by the arm at which place he placed him
 20 under arrest.
 21 Q. Did he tell you anything about the
 22 person he arrested?
 23 A. Your client made it known who he was in
 24 relation to Trooper Rivera.
 25 Q. I am asking whether Trooper Rivera told

Page 24

1 you about the client?
 2 A. Yes.
 3 Q. What did tell you?
 4 A. That he had a relationship with the
 5 client's wife previous to this occasion, and, you
 6 know, where he was and what he was doing.
 7 Q. This is the defendant's wife, the
 8 arrestee's wife?
 9 A. Yes.
 10 Q. You used the word client. He wasn't
 11 your client?
 12 A. No, no.
 13 Q. Okay. All right. Did you review the
 14 reports that Trooper Rivera wrote on this incident
 15 report, I should say?
 16 A. I would have to see the report to see if
 17 I did or not.
 18 MR. MARSHALL-OTTO: It's R-13.
 19 MR. LOUGHRY: I'm getting there.
 20 Actually, it's R-10.
 21 THE WITNESS: R-10 is the arrest report.
 22 R-10 is the Investigation Report.
 23 BY MR. LOUGHRY:
 24 Q. Have you had a chance to look at it?
 25 A. I'm looking at it now.

Page 25

1 Q. Okay.
 2 There's a couple places for, I guess,
 3 detectives or somebody to approve here for other
 4 troopers, but your name does not appear here.
 5 A. No, I did not approve this report.
 6 Q. Who is Trooper Green?
 7 A. Timothy Green, I believe, would have
 8 been an acting sergeant at that time, one of my
 9 patrol supervisors.
 10 Q. What about DSG Koenig?
 11 A. He was, I believe, would have been the
 12 detective sergeant and assigned to Hamilton at that
 13 time.
 14 Q. And is it unusual to have a couple
 15 signatures of approval?
 16 A. No.
 17 Q. Did either of these folks, Green or
 18 Koenig, discuss this report with you?
 19 A. I don't recall speaking with them
 20 directly about this report.
 21 Q. In any of your conversations with Rivera
 22 did the question come up as to whether he was going
 23 to include in his report some mention of the
 24 relationship as it were between Mr. Martinez and Mrs.
 25 Martinez and Trooper Rivera, that being there was an

Pages 22 to 25

Page 26

1 adulteress affair between Rivera and Martinez?

2 **A. I don't recall speaking to Trooper**
 3 **Rivera about the substance of the report. The way**
 4 **the Investigation Report goes, the trooper writes**
 5 **them, the sergeant will approve it. Usually a**
 6 **criminal investigation office will do the second**
 7 **level of approval. And again, dates, that was**
 8 **submitted, you know, he may have typed it up on the**
 9 **day I wasn't working, and it had been approved on a**
 10 **day I was not working.**

11 Q. Was it appropriate to write this report
 12 in your view knowing what you know after the fact,
 13 you know, was it appropriate for him to write this
 14 report without making any mention of the background
 15 between the relationship, Vicky Martinez, Jose
 16 Rivera, and Joel Martinez?

17 **A. Appropriateness?**

18 Q. Yes. Was it appropriate, was it
 19 correct?

20 **A. He's a trooper, an incident occurred, he**
 21 **placed somebody under arrest, he's mandated to write**
 22 **an Investigation Report.**

23 Q. Was it appropriate without explaining
 24 the reason, at least his perceived reason for the
 25 purported upset and tumultuous behavior of Mr.

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1 that, you know, it wasn't appropriate, or, yeah, I
 2 was wrong, something to that.

3 Q. I will ask you a specific question. Did
 4 he tell you that he used the F word a dozen times or
 5 20 times or something like that? Did he admit that
 6 to you?

7 **A. He admitted to behavior in front of the**
 8 **juveniles that matches Trooper Rivera's account.**

9 Q. Well, did you give him Trooper Rivera's
 10 account and ask him to review?

11 **A. We spoke because your client was very**
 12 **upset. Your client wished to speak to somebody in**
 13 **the supervisory capacity. Your client did not, when**
 14 **I spoke to him, it was my understanding of the**
 15 **events, your client agreed, acknowledged, did not**
 16 **dispute the events that occurred and expressed**
 17 **remorse.**

18 Q. I asked you a specific question. The
 19 specific question was did you show Mr. Martinez the
 20 written report that you have in front of you so he
 21 could express agreement or disagreement with what was
 22 written?

23 **A. No.**

24 Q. Oh, okay. It didn't exist at that
 25 point, did it?

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1 Martinez?

2 **A. I don't have an issue with him not**
 3 **mentioning it.**

4 Q. Why is that?

5 **A. Is it material to his arrest? Is it**
 6 **material as towards your client's behavior? You**
 7 **know, at the end of the day, the behavior that he**
 8 **described to me which your client acknowledged to me**
 9 **and was written here, you know, using profanity in**
 10 **front of juveniles, being loud and aggressive toward**
 11 **a police officer in uniform and place his hands on**
 12 **him, this seems wholly inappropriate to me.**

13 Q. Did you have a discussion with Mr.
 14 Martinez?

15 **A. Yes, I did.**

16 Q. What did he tell you?

17 **A. In substance, both accounts of the**
 18 **events matched up.**

19 Q. And so he told you he had used all this
 20 profanity?

21 **A. I spoke to him. In substance, yes.**

22 Q. Well --

23 **A. We didn't get into specific stuff, but**
 24 **his somewhat tumultuous behavior in front of people,**
 25 **you know, he would acknowledge, he did acknowledge**

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1 **A. No.**

2 Q. So how is it that he became aware, if he
 3 did become aware, of what Rivera was saying?

4 **A. From the moment he walked in the**
 5 **station, he was yelling, he wanted to speak to**
 6 **somebody in a supervisory capacity, and he went so**
 7 **far as saying he wanted to speak to the Attorney**
 8 **General. As a shift supervisor, I saw what was going**
 9 **on. This is somewhat not in the, you know, usual**
 10 **course of business, something like this is occurring.**
 11 **Prisoners come in all the time and they are quiet,**
 12 **whatever. He was in an agitated state. I spoke to**
 13 **him, identified myself as a supervisor. He has some**
 14 **objections, that he's been arrested, which he said he**
 15 **was arrested for no reason. I said that I would**
 16 **speak to him; however, some of the nuts and bolts of**
 17 **processing kind of had to start and he needed to**
 18 **allow that to occur.**

19 Q. Where did you speak to him?

20 **A. In the cells.**

21 Q. You went into the holding cells?

22 **A. Yes.**

23 Q. And you sat down with him?

24 **A. I don't know if I sat down, but I spoke**
 25 **to him within the cells.**

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1 Q. Did you go inside the cells with him or?
 2 A. I am sure I was in the cell room. The
 3 physical layout, whether he was behind the bars,
 4 whether I was in the doorway.
 5 Q. Was he still handcuffed?
 6 A. I don't know.
 7 Q. He was upset?
 8 A. Oh, sure.
 9 Q. And he told that you this guy had an
 10 affair with his wife?
 11 A. Yes.
 12 Q. Now, what I am specifically asking, did
 13 you make any notes about that?
 14 A. I did a report for him and forwarded
 15 that to Internal Affairs, because his objection was
 16 that he had been arrested for no reason.
 17 Q. Uh-hum.
 18 A. The details of that relationship, I
 19 don't know if -- I don't recall making specific note.
 20 However, you know, he acknowledged a relationship,
 21 Trooper Rivera acknowledged the relationship, and I
 22 conveyed, you know, that to my superiors, also.
 23 Q. So did you write a report writing down
 24 what it is he told you?
 25 A. No, I did not.

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1 Q. Did you -- you didn't write down any
 2 report that attributed to any particular quotes to
 3 him when he was out there on the field or talking to
 4 Rivera there at scene?
 5 A. Not that I recall.
 6 Q. I mean, did he admit to you that he used
 7 the F word, the fuck word, you know, 15 or 20 times?
 8 A. As a direct admission, I don't recall.
 9 Q. Okay. And did he tell you, did he admit
 10 to you that he had grabbed Trooper Rivera?
 11 A. Yes, he did.
 12 Q. How did he say that he did that?
 13 A. He grabbed him by the arm. Or he
 14 acknowledged when I conveyed the set of circumstances
 15 to him, something -- he agreed with it. He was even
 16 apologetic.
 17 Q. Did you write that down?
 18 A. No.
 19 Q. You didn't make a record of that?
 20 A. No.
 21 Q. Were you ever called to attend court in
 22 this case when this case came up in municipal court?
 23 A. No.
 24 Q. No one came, we need you because this
 25 guy made some kind of admissions to you?

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1 A. No.
 2 Q. That never got communicated to you? No?
 3 A. I was never subpoenaed as far as I am
 4 aware of.
 5 Q. You knew the case was dismissed, don't
 6 you? Do you know that?
 7 A. I am aware after the fact of that, yes,
 8 I was.
 9 Q. In terms of the Internal Affairs
 10 investigation, were you interviewed?
 11 A. I don't believe I was.
 12 Q. Do you know the fellow Vargas?
 13 A. I know the name. I don't know if I'm
 14 personally acquainted with him.
 15 Q. Do you know that he was trying to figure
 16 out what happened out there as far as at the field
 17 between Rivera and Martinez?
 18 A. If you say so. Was he the investigator
 19 assigned to the case?
 20 Q. Yes.
 21 A. Okay.
 22 Q. You never had any contact with him to
 23 tell him about the extremely valuable information
 24 that Mr. Martinez gave you from what you're telling
 25 me?

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1 A. I don't believe that I was interviewed.
 2 I don't believe.
 3 Q. What's an SP 525?
 4 A. I believe that's the Report of Incident
 5 form.
 6 Q. Your badge is 6110?
 7 A. 6110, correct.
 8 Q. What's the function of that report,
 9 SP 525? What's the function of that report?
 10 A. It's report of incident form. I guess
 11 when allegation has been made or some substantial
 12 breaking of a rule or law, it comes to my attention,
 13 I fill it out and forward it to Internal Affairs.
 14 Q. You mean when a member of the public
 15 brings an allegation against a police officer, for
 16 example?
 17 A. It could be public, could be internally,
 18 sure.
 19 Q. It could be another police officer
 20 making an allegation against another police officer?
 21 A. Yes.
 22 Q. So you report the substance of the
 23 allegation?
 24 A. Yes.
 25 Q. Is it a function of that form to put

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1 down memorialized statements that people have made
 2 about it or is it simply to report the allegation?
 3 **A. It's to report the allegation and to**
 4 **forward it on to Internal Affairs to investigate.**
 5 Q. So that's the report you filled out?
 6 **A. As I recall, yes.**
 7 Q. So the allegation was not Rivera's
 8 allegation against Martinez, but it was Martinez's
 9 allegation about the so-called improper conduct by
 10 Rivera?
 11 **A. Your client felt he was arrested without**
 12 **cause.**
 13 Q. Okay.
 14 **A. And was in fear. I said to him, well,**
 15 **what is your complaint? And we spoke about what**
 16 **incident occurred. And he did not dispute what had**
 17 **occurred. So I said if you're -- I explained to him,**
 18 **my understanding, I explained to him disorderly**
 19 **conduct, harassment, and again, he acquiesced,**
 20 **agreed, did not dispute what occurred, and even**
 21 **expressed regret as to his actions and behavior.**
 22 Q. But did he allege or say to you that he
 23 was arrested without reason?
 24 **A. Yes.**
 25 Q. And that was an entry in his complaint

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1 **A. I don't recall.**
 2 Q. If you did administer Miranda warnings,
 3 you would have a card or form that you sign, have
 4 them sign, have the defendant sign?
 5 **A. There is a Miranda card that**
 6 **acknowledges the time and date you've read somebody**
 7 **their Miranda.**
 8 Q. It's a little line on the bottom?
 9 **A. There are times people do read the**
 10 **Miranda rights such as on the side of the road, you**
 11 **know. It's possible. If I had read him his rights**
 12 **again in there before I took it, it's possible that I**
 13 **wouldn't have filled one out. But I did fill one**
 14 **out, it should be in the case file somewhere, it**
 15 **should have been scanned in or part of it.**
 16 Q. And the SP 525 form should be available?
 17 **A. That's an administrative form. It's not**
 18 **an investigatory form per se, and I wasn't asking him**
 19 **any incriminating questions, so I wouldn't have read**
 20 **him as a matter of course before.**
 21 Q. I understand. So it's not the function
 22 of that form, you're saying, because there are people
 23 statements or anything like that?
 24 **A. Correct.**
 25 Q. But it is the function of the form to

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1 or was it something else?
 2 **A. Yes and no. I do recall, and I said,**
 3 **well, looking at this incident today and the set of**
 4 **circumstances, which he did not dispute to me,**
 5 **factually as I understood them, with the arrest, I**
 6 **said: Then what is your complaint? And he intimated**
 7 **that he was in fear of further reprisals. That in**
 8 **regard to the initial arrest and his concerns, that's**
 9 **what were put in there and sent to. . .**
 10 Q. But you do recall he thought he was
 11 arrested without reason?
 12 **A. Well, that was, I mean, he was very**
 13 **agitated when he came in. He made a lot of**
 14 **statements.**
 15 Q. Was that one of the statements?
 16 **A. Yes, he was arrested for no reason, yes.**
 17 Q. Okay.
 18 **A. And when I explained to him why he was**
 19 **arrested, he seemed to agree or understand. So that**
 20 **then somewhat became secondary to his concern of**
 21 **future reprisals. Or I don't even know how I termed**
 22 **it, but. . .**
 23 Q. I'm curious, did you administer Miranda
 24 warnings to have that conversation with him? I'm
 25 just curious.

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1 pass on, a complaint, so to speak, that would require
 2 them some, for example, in this case, Internal
 3 Affairs' work?
 4 MR. VOMACKA: It's just compound. Are
 5 you asking the function of the form or --
 6 MR. LOUGHRY: Yeah, the function of the
 7 form.
 8 THE WITNESS: It's a reportable
 9 incident. It's to notify, and then you have to
 10 pull out the SOP for internal investigations to
 11 get the verbiage and the term.
 12 BY MR. LOUGHRY:
 13 Q. But a reportable incident could be
 14 someone speeding on a highway, right?
 15 **A. A reportable incident, people can come**
 16 **in and say they didn't like the trooper's attitude**
 17 **and demeanor.**
 18 Q. Okay.
 19 **A. They can come in and say they were**
 20 **issued a summons without probable cause.**
 21 Q. Okay.
 22 **A. They can come in and say they were**
 23 **racially profiled.**
 24 Q. So it's basically a complaint about the
 25 trooper's conduct?

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1 A. Yes, it's a general form if something
2 arises to where, you know, if we may need to address
3 it. As a supervisor I am mandated to fill out and
4 forward it on.

5 Q. Did he say anything about any pain or
6 injury that you suffered?

7 A. I don't recall.

8 Q. Did he show you any part of his body?

9 A. It's been five years. I don't recall.

10 Q. Okay. Those are the questions, I have.

11 Thank you.

12 (Witness excused.)

13 (Testimony concluded.)
14
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1 CERTIFICATE

2 I, Theresa DiStephano, a Certified Court
3 Reporter of the State of New Jersey, do hereby
4 certify that prior to the commencement of the
5 examination,

6 THOMAS R. MURTHA
7 was duly sworn by me to testify to the truth,
8 the whole truth and nothing but the truth.

9 I do further certify that the foregoing is
10 a true and accurate transcript of the testimony
11 as taken stenographically by and before me at
12 the time, place and on the date hereinbefore
13 set forth.

14 I do further certify that I am neither a
15 relative nor employee nor attorney nor counsel
16 of any of the parties to this action, and that
17 I am neither a relative nor employee of such
18 attorney or counsel and that I am not
19 financially interested in this action.
20
21


22 THERESA DISTEPHANO, C.C.R.
23 CERTIFICATE NO. X101115
24
25

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C E R T I F I C A T E

I, Theresa DiStephano, a Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.


Theresa DiStephano, C.C.R.
Certificate No. X101115